

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

| | | |
|--|---|------------------------------|
| MARY MITCHELL, |) | |
| on behalf of plaintiff and the class defined |) | |
| below, |) | |
| |) | |
| Plaintiff, |) | Case No. 2:12-cv-523-TLS-APR |
| |) | |
| vs. |) | |
| |) | |
| LVNV FUNDING, LLC; RESURGENT |) | |
| CAPITAL SERVICES, L.P.; and ALEGIS |) | |
| GROUP, LLC, |) | |
| |) | |
| |) | |
| Defendant. |) | |

**UNOPPOSED MOTION TO ADD PLAINTIFF AS ADDITIONAL CLASS
REPRESENTATIVE**

Counsel for the certified class respectfully requests that the Court enter an order, naming class member, Kimberly Moore, as an additional plaintiff and class representative in this matter.

In support of this motion, counsel plaintiff states:

1. On March 6, 2019, this Court granted the parties Joint Motion for Preliminary Approval and set at Fairness Hearing for July 25, 2019 at 11:00am. (Dkt. No. 194)
2. On July 19, 2019, Class Counsel filed a memorandum in support of the final approval for the class action settlement agreement. (Dkt. No. 198)
3. This Court held a Fairness Hearing on July 25, 2019. Plaintiff Mary Mitchell was excused from appearing at the Fairness Hearing due to her failing health. (Dkt. No. 199)
4. That same day, Class Counsel learned for the first time that Plaintiff Mary Mitchell had succumbed to her illness approximately 48 hours prior to the Fairness Hearing.

5. Class Counsel filed a Suggestion of Death on July 25, 2019. (Dkt. No. 204)

6. Based on class counsel's investigation thus far, class counsel believes that Ms. Mitchell had minimal assets. As such, class counsel is working with Indiana counsel to have Ms. Mitchell's award distributed through a small estates affidavit.

7. Class counsel believe it is in the best interests of the class to have another person named as a representative immediately. With a new class representative, class counsel can continue their efforts to expeditiously obtain compensation for the class and allow this Court to enter the final approval order terminating the case with prejudice.

8. Class member, Kimberly Moore, has retained class counsel to represent her in this matter and is willing to serve as a representative of the class.

9. Neither class counsel, nor Kimberly Moore are seeking any additional relief as a result of the addition of Ms. Moore as a plaintiff and class representative, and adding Ms. Moore will not otherwise change the terms of the Agreement as presented to this Court.

10. "Substitution of unnamed class members for named plaintiffs who fall out of the case because of settlement or other reasons is a common and normally an unexceptionable (routine) feature of class action litigation both in the federal courts and in the Illinois courts." *Phillips v. Ford Motor Co.*, 435 F.3d 785, 787 (7th Cir. 2006). "A properly certified class has a legal status separate from and independent of the interest asserted by the named plaintiff." *Whitlock v. Johnson*, 153 F.3d 380, 384 (7th Cir. 1998); *Sosna v. Iowa*, 419 U.S. 393, 399 (1975) ("When the District Court certified the propriety of the class action, the class of unnamed persons described in the certification acquired a legal status separate from the interest asserted by appellant.")

11. On July 31, 2019, class counsel conferred with defendants' counsel regarding this

motion. Defendants' counsel has no objection to adding Kimberly Moore as a Plaintiff and Class Representative.

WHEREFORE, Counsel for the certified class respectfully requests that the Court enter an order, naming class member, Kimberly Moore, as an additional plaintiff and class representative in this matter.

Respectfully submitted,

s/Cassandra P. Miller
Cassandra P. Miller

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CERTIFICATE OF SERVICE

I, Cassandra P. Miller, hereby certify that on July 31, 2019, I caused to be filed the foregoing documents with the Clerk of the Court using the CM/ECF System which will cause to be sent notification of such filing via electronic mail to all counsel of record.

s/Cassandra P. Miller
Cassandra P. Miller